

Message Text

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PAGE 01 SANTIA 04063 111722Z

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ACTION SS-30

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FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC IMMEDIATE 9338

C O N F I D E N T I A L SANTIAGO 4063

EXDIS

EO 11652: GDS

TAGS: EIND, CI

SUBJECT: ANACONDA NEGOTIATIONS

REF: STATE 148934

1. SUMMARY: WE REQUEST RECONSIDERATION OF DEPARTMENT'S INSTRUCTION WE DELIVER AIDE-MEMOIRE TO GOC RESTATING USG VIEW RE EXCESS PROFITS DEDUCTION, BELIEVING THIS MAY BE COUNTER-PRODUCTIVE. END SUMMARY.

2. WE ARE PUZZLED RE RATIONALE FOR DEPARTMENT'S INSTRUCTION THAT WE PRESENT AT THIS STAGE FORMAL AIDE-MEMOIRE TO GOC EXPRESSING USG ASSUMPTION THAT ANACONDA SETTLEMENT WILL BE IMPLEMENTED SO AS TO AVOID MAINTENANCE OF EXCESS PROFIT DEDUCTION. REQUEST RECONSIDERATION.

3. BOTH IN WASHINGTON AND IN SANTIAGO, USG HAS REPEATEDLY MADE IT KNOWN TO CHILEANS IN STRONGEST TERMS THAT WE COULD NOT AND WOULD NOT ACCEPT PRINCIPLE OF EXCESS PROFITS DEDUCTIONS RETROACTIVELY APPLIED. RECORD IS PERFECTLY CLEAR ON THIS, AND CHILEAN GOVERNMENT IS FULLY AWARE OF IT. IF OUR PRESENT INFORMATION IS CORRECT -- AND IF IT IS NOT, THAT IS DUE SOLELY TO ANACONDA'S FAILURE TO TELL US WHERE THEY STAND -- WE ARE ON THE VERGE OF A SETTLEMENT WHICH WILL NOT DO VIOLENCE TO THE PRINCIPLE WE HAVE MAINTAINED, WHILE ENABLING CHILEANS TO MEET THEIR OWN VERY SERIOUS CONSTITUTIONAL AND POLITICAL PROBLEM.

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4. IN THESE CIRCUMSTANCES, TO DELIVER AN AIDE-MEMOIRE WILL AT THE LEAST CONFUSE THE CHILEANS AND, MORE LIKELY, PRECIPITATE OPENLY AND EXPLICITLY THE VERY ISSUE WE THOUGHT BOTH SIDES HAVE SOUGHT TO KEEP FROM BECOMING A BARRIER TO AGREEMENT. DELIVERY OF AIDE-MEMOIRE MAY WELL ELICIT A CHILEAN REPLY. THAT REPLY WILL BE FRAMED FOR THE RECORD, AS IS THE AIDE-MEMOIRE, AND WE BELIEVE IT WILL NOT BE POSSIBLE FOR THE CHILEANS TO AVOID RESTATING THE EXCESS PROFITS DEDUCTION POINT. THIS COULD CONCEIVABLY THROW A ROADBLOCK IN THE WAY OF THE REMAINING NEGOTIATIONS.

5. EVEN IF BY ANY CHANCE THE CHILEANS SHOULD ACCEPT OUR VIEW, WE DO NOT BELIEVE ANACONDA OR THE US WOULD NECESSARILY STAND TO GAIN. SHOULD THE JUNTA AGREE TO JETTISON THE EXCESS PROFITS PRINCIPLE, A SUCCESSOR GOVERNMENT WHICH CAME TO POWER DURING THE LIFE OF THE COMPENSATION AGREEMENT -- SAY, 15 YEARS -- WOULD BE IN A POSITION TO CITE DISREGARD OF THE CHILEAN CONSTITUTIONAL PROVISION ON EXCESS PROFITS AS A PRETEXT FOR INVALIDATING THE AGREEMENT.

6. AS MATTER OF DETAIL, WE CANNOT IN AIDE-MEMOIRE REFER TO ANY ASSURANCES RECEIVED FROM SAEZ. ALL WE HAVE IS WORD FROM QUIGLEY TO EFFECT THAT SAEZ SAID EXCESS PROFITS WOULD NOT BE AN OBSTACLE TO SETTLEMENT.

7. FOREGOING IS NOT INTENDED IN ANY WAY TO INTERFERE WITH USG ASSERTION OF ITS OPPOSITION TO EXCESS PROFITS DEDUCTION. ONCE SETTLEMENT IS ANNOUNCED, IT WOULD IF CONSIDERED NECESSARY MEET OBJECTIVE AIDE-MEMOIRE IS DESIGNED TO SERVE FOR USG THROUGH DEPARTMENT SPOKESMAN TO MAKE ITS POSITION CLEAR. STATEMENT, OR RESPONSE TO QUESTION, COULD STRESS THAT WE DO NOT CONSIDER THAT SETTLEMENT ANACONDA HAS MADE REPRESENTS IN ANY WAY AN APPLICATION OR ENDORSEMENT OF THE EXCESS PROFITS PRINCIPLE. CHILEANS MIGHT OR MIGHT NOT REACT, BUT IN ANY EVENT AGREEMENT WOULD HAVE BEEN CONCLUDED.

8. OF COURSE, IF GOC INTENDS TO JUSTIFY THE ANACONDA SETTLEMENT BY PUBLICLY AFFIRMING THAT IT REGARDS AGREEMENT AS EMBODYING EXCESS PROFITS CALCULATION, USG SHOULD MAKE ITS VIEW KNOWN PUBLICLY AND PRIVATELY. WE DO NOT KNOW ENOUGH

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ABOUT BASIS OF SETTLEMENT TO JUDGE WHETHER THIS WILL BE NECESSARY.

9. I WOULD LIKE TO BE SURE THAT DEPARTMENT HAS CONSIDERED ALL OF FOREGOING BEFORE WE TAKE ACTION.
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